

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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FREDDIE NASH,

Petitioner,

v.

Case No. 07-C-1083

MICHAEL THURMER,

Respondent.

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

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On December 3, 2007, Freddie Nash filed a petition pursuant to 28 U.S.C. § 2254, asserting that his state court conviction and sentence were imposed in violation of the Constitution. In a Rule 4 order, this court directed Nash to show cause why the petition should not be dismissed for untimeliness. Nash failed to show cause, and the petition was dismissed for untimeliness. 28 U.S.C. § 2244(d).

Nash now appeals, which requires a certificate of appealability before it may proceed. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The certificate of appealability may issue only if the applicant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To do so, the appellant must demonstrate that reasonable jurists could debate whether his habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

I do not find that jurists would debate the issue of the petition's timeliness, and a certificate of appealability will therefore be denied.

Presumably the petitioner is also seeking leave to appeal *in forma pauperis* on appeal. Leave to proceed in that capacity will be denied only when an appeal is not made in good faith. Bad faith is a lower standard than that considered in the request for a COA, *Walker v. O'Brien*, 216 F.3d 626, 631-32 (7th Cir. 2000), but even so I conclude that the appeal is lacking in merit and therefore certify that it is not taken in good faith.

A certificate of appealability is **DENIED**, and I further certify that the appeal is not taken in good faith. Leave to proceed *in forma pauperis* is therefore **DENIED** as well.

**SO ORDERED** this 30th day of April, 2008.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge